

EXHIBIT 3

- The City of Fresno's letter setting forth the substantive basis for Plaintiff's nuisance claim (Feb. 8, 2013)

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February 8, 2013

Jeffrey J. Parker, Esq.
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Re: *City of Fresno v. Chevron U.S.A., Inc., et al.*
No. 1:04-cv-04973-SAS (MDL 1358)

**Plaintiff City of Fresno's Meet-and-Confer re Defendants' Proposed Motion
for Partial Summary Judgment Regarding Plaintiff's Nuisance Claims**

Dear Mr. Parker:

This will serve as plaintiff City of Fresno's ("Fresno's") initial meet-and-confer letter re defendants' proposed motion for partial summary judgment regarding Fresno's nuisance claims.

The Manufacturer Defendants' Conduct Assisted in the Creation of a Nuisance

In *In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, 457 F.Supp.2d 455, 464 (S.D.N.Y. 2006) (applying California law), Judge Scheindlin held that summary judgment was not appropriate if there was a genuine issue of material fact whether defendants did more than merely manufacture or distribute gasoline containing MTBE without warning of the danger posed. In *In re MTBE*, plaintiff Orange County Water District alleged that such evidence included: defendants represented that gasoline containing MTBE could be used in the same manner as gasoline without MTBE and that it did not require any different or special handling instructions, defendants marketed and promoted MTBE knowing that USTs could not safely contain MTBE, and defendants knew that MTBE posed "unique dangers" to groundwater. *Id.*

The *In re MTBE* opinion noted that "a key sentence from [*County of Santa Clara v. Atlantic Richfield Co.*, 137 Cal.App.4th 292, 309 (Cal. Ct. App. 2006)] bears repeating": "[L]iability is premised on defendants' promotion of lead paint for interior use with knowledge of the hazard that such use would create." 457 F.Supp.2d at 464. Judge Scheindlin concluded: "If the allegations made by OCWD are true, such allegations would be sufficient to sustain a nuisance claim against the defendants." *Id.*

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Here, plaintiff's interrogatory responses have repeatedly set forth a detailed summary of such evidence: that the industry was well aware of the environmental risks posed by MTBE, that the industry sought to conceal those risks from the public and regulators, and that the industry continued to utilize MTBE without providing adequate warnings concerning MTBE's environmental and health risks. (See, e.g., Plaintiff City of Fresno's Supplemental Responses to Chevron Defendants' Second Set of Interrogatories to Plaintiff, at Response to Interrogatory No. 19.) This evidence is further justification for plaintiff declining to dismiss its nuisance claims against manufacturer defendants, as detailed in the following list.

Site-Specific Allegations

In response to the Table of Defendants and Subject Sites in Attachment 1 to your letter dated December 12, 2012, plaintiff responds as follows:¹

1. M & S Texaco, 2619 S. East Avenue

Plaintiff is willing to dismiss its nuisance claim against: Kern Oil, Lyondell.
Plaintiff declines to dismiss its nuisance claim against: Shell.

The site became a Shell-branded station in 1998 and remained Shell-branded until at least 2009. (Shell Defendants' Responses to City of Fresno's First Set of Interrogatories to Defendants, Exh. B, at p. 8; Jatinder Dhillon Depo., pp. 29:20-23, 39:5-10, 39:19-21.) Company representatives gave the station operator instructions, including a manual, for cleaning up gasoline releases. (Jatinder Dhillon Depo., pp. 27:4-11.) While the station was branded Shell, company representatives from Shell would visit the station. (Jatinder Dhillon Depo., pp. 149:4-15.)

2. Tosco #30587, 1610 N. Palm

Plaintiff is willing to dismiss its nuisance claim against: Coastal, Kern Oil, Lyondell.
Plaintiff declines to dismiss its nuisance claim against: Chevron.

Union Oil branded gasoline was supplied to this site from approximately 1974 until at least 1998-1999. (Gary Beacom depo., pp. 13-15, 47, 157-158.) Union Oil owned the USTs at this site from at least 1974 until at least 1998-1999. (Gary Beacom depo., pp. 84-85.) Union Oil is a wholly owned subsidiary of Chevron.

3. 7-Eleven #19198, 1596 N. Palm Avenue

Plaintiff is willing to dismiss its nuisance claim against: Citgo.

¹ Four of the potential moving defendants from the Table – Arco, CEMC, Chevron Corp., and Unocal – are omitted here due to their dismissal from the action.

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4. Valley Gas, 2139 South Elm Street

Plaintiff is willing to dismiss its nuisance claim against: Kern Oil, Tesoro.

5. Chevron #9-4374, 1160 Fresno Street

Plaintiff is willing to dismiss its nuisance claim against: Union Oil, Coastal, Kern Oil, Lyondell.

6. Shell (1212), 1212 Fresno Street

Plaintiff is willing to dismiss its nuisance claim against: Kern Oil, Lyondell.

7. Unocal #6353, 1418 E. Shaw

Plaintiff is willing to dismiss its nuisance claim against: Coastal, Kern Oil, Lyondell.

Plaintiff declines to dismiss its nuisance claim against: Chevron.

The site was branded Union Oil from before the early 1990's until at least 1997. (Gary Beacom depo., pp. 13-15, 47, 157-158.) Union Oil owned the USTs at the site from at least the early 1990's until at least 1997. (Gary Beacom depo., pp. 32-33.) Union Oil branded gasoline was supplied to this site from at least the early 1990's until at least 1997. (Gary Beacom depo., pp. 13-15.) Union Oil is a wholly owned subsidiary of Chevron.

8. U&A Gas & Food Mart, 2929 N. Blackstone

Plaintiff is willing to dismiss its nuisance claim against: Tesoro.

9. Ratcliff Gas, 2145 Blackstone Avenue

Arco has been dismissed from the case.

10. Beacon #537, 798 West Gettysburg, Clovis

Arco has been dismissed from the case.

11. Gilbert's Exxon, 4142 East Church

Plaintiff is willing to dismiss its nuisance claim against: Coastal, Lyondell.

Plaintiff declines to dismiss its nuisance claim against: Exxon.

The station was branded Exxon from at least 1978 until it closed in 1991. (Gilbert Romero depo., pp. 18:8-10, 23:17-20, 34:16-35:19, 137:12-15, 137:17-138:13, 138:17-139:2.) The station sold Exxon gasoline while it was branded Exxon. (Gilbert Romero depo., p. 99:10-18.)

12. Van Ness Auto, 2740 North Van Ness

Plaintiff is willing to dismiss its nuisance claim against: Union Oil, Coastal, Kern Oil, Lyondell.

Plaintiff declines to dismiss its nuisance claim against: Chevron.

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Chevron supplied gasoline to this site from prior to the relevant time period until at least August 1986. Subsequently, R.V. Jensen delivered gasoline refined by Chevron from 1986 until at least 2006. (James Clements depo., pp. 25-27; Garabed Bedirian depo., pp. 37:11-19, 38:17-39:10; Chevron U.S.A. Inc.'s Supply Declaration of Frank G. Soler and exhibits thereto.) Upon the station operator's request, Chevron installed more Chevron signs at the station. (Garabed Bedirian depo., p. 41:3-8.) Chevron inspected the station. (Garabed Bedirian depo., p. 41:9-10, 41:13-17.) Chevron gave the station operator instructions on cleaning up gasoline releases, including a phone number to call in case of a gasoline spill. (Garabed Bedirian depo., pp. 65:11-12, 65:14-17, 66:2-7.) As early as 1985, Chevron's Dealer Supply Contract required the station to "comply with Company's programs and procedures for handling unleaded gasolines in their present or future form," and mandated that "Company's representatives shall have the right at any time to enter upon the premises where unleaded gasolines purchased hereunder are stored by or for Dealer and to take such quantities of unleaded gasolines as they deem necessary to check the quality of such products." (James Clements depo., pp. 45:6-21, 46:10-47:10, 47:13-16, 48:8-10, and Exh. 7 thereto.)

13. Smith Tank Lines (Former Carey Oil), 30 E. Divisadero Street

Plaintiff is willing to dismiss its nuisance claim against: Kern Oil, Valero.

14. Red Triangle, 2809 South Chestnut Avenue

Plaintiff is willing to dismiss its nuisance claim against: Coastal, Kern Oil, Lyondell, Nella.
Plaintiff declines to dismiss its nuisance claim against: Exxon, Tesoro, Valero.

Red Triangle was an Exxon dealer and bought gasoline from Exxon. (Gail Blue depo., pp. 16:18-17:14, 17:16-22, 18:23-19:2; Glen Blue depo., pp. 22:4-6, 22:8-12, 22:14-20.)

Red Triangle bought gasoline from Tesoro. (Gail Blue depo., pp. 17:12-14, 17:16-17, 18:1-3.)

Valero supplied gasoline containing MTBE to Red Triangle from 1997 through 2002. (The Valero Defendants' Objections and Responses to Plaintiff City of Fresno's First Set of Interrogatories to Defendants, first page of Exhibit A [Red Triangle is listed alphabetically as "DBA RED TRIANGLE OIL CO."].) After James Shehadey's purchase of Red Triangle in 2002, Valero remained as one of the main suppliers of gasoline to Red Triangle in 2002-2003. (Joel Hohenshelt Depo., at pp. 32, 34, 83; James Shehadey Depo., at pp. 133-134 ["It was actually Valero refined . . ."]).

15. Chevron #9-9093, 3996 N. Parkway Drive

Plaintiff is willing to dismiss its nuisance claim against: Union Oil, Coastal, Kern Oil, Lyondell.

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16. Tosco #39118, 1605 N. Cedar

Plaintiff is willing to dismiss its nuisance claim against: Coastal, Kern Oil, Lyondell.
Plaintiff declines to dismiss its nuisance claim against: Chevron.

Union Oil supplied gasoline to this site from prior to the relevant time period until at least November 1996. (Union Oil Company of California's Supply Declaration of Frank G. Soler and exhibits thereto.) Union Oil supplied gasoline to this site from prior to the relevant time period until at least November 1996. (Union Oil Company of California's Supply Declaration of Frank G. Soler and exhibits thereto.) Union Oil owned the USTs and the real estate at the site from prior to the relevant time period until at least April 1997. (Defendant Union Oil Company of California's Declaration in Response to CMO #75 of Grace N. Chan.) Union Oil is a wholly owned subsidiary of Chevron.

17. Beacon #3519, 4591 E. Belmont Avenue

Plaintiff is willing to dismiss its nuisance claim against: Kern Oil.

18. Beacon-Arco #615, 1625 Chestnut Avenue

Plaintiff is willing to dismiss its nuisance claim against: Kern Oil.

19. Exxon Service Station, 4594 East Tulare Street

Plaintiff is willing to dismiss its nuisance claim against: Coastal, Kern Oil, Lyondell.
Plaintiff declines to dismiss its nuisance claim against: Exxon.

The station sold Exxon-branded gasoline from 2002 or 2003 until 2006. (Narinder Singh depo., pp. 22:7-12, 25:18-24, 28:21-25, 29:17-21.)

20. 7-Eleven #13917, 3645 Olive Avenue

Plaintiff is willing to dismiss its nuisance claim against: Citgo.

Please let us know if you wish to meet-and-confer regarding these matters.

Very truly yours,



Michael Axline
Evan Eickmeyer

cc: All Counsel (via LNFS)